

UNITED STATES OF AMERICA :
:
v. : **CRIMINAL NO. 99-76**
:
KEVIN WONGUS :

1. There is probable cause to believe that the defendant has violated 18 U.S.C. §922(g) as charged by indictment of February 16, 1999. The evidence in this case

is strong and consists of eye witness testimony of a Philadelphia officer who recovered a loaded Bryco Arms, Model #59 9 millimeter semiautomatic pistol, serial #755898 from the defendant.

2. The strength and nature of the case against the defendant and the corresponding probability that the defendant will be incarcerated for a significant period of time, establishes his danger to the community and increases the high risk that the defendant will not appear as required by the Court.

B. Maximum Penalties

1. The defendant is charged with one count of possession of a firearm by a convicted felon which exposes the defendant to a total maximum penalty of life imprisonment and a \$250,000 fine.

2. The defendant faces a mandatory minimum period of 15 years in prison due to his status as an Armed Career Criminal.

3. Under the Sentencing Guidelines, the government estimates conservatively that the defendant faces a prison term of 210-262 months without parole.

4. Accordingly, the defendant has a substantial incentive to flee.

C. Prior Criminal Record

The defendant has four prior felony convictions and one misdemeanor conviction.

1. The defendant has a 1984 Robbery F2 conviction for which he received a sentence of three (3) years probation. This conviction counts as a qualifying 'crime of

violence’ for purposes of the Armed Career Criminal Statute (hereinafter referred to as the “ACC Act”).

2. The defendant has a 1987 Firearms M1 conviction for which he received a sentence of one year reporting probation.

3. The defendant has a 1987 Robbery conviction of unknown gradation and received a county sentence. This sentence counts as three (3) points under the Sentencing Guidelines and is a second qualifying ‘crime of violence’ under the ACC Act.

4. The defendant has a 1989 Felony Drug conviction and received a state sentence of 2 ½ to 5 years. This sentence counts as three (3) points under the Sentencing Guidelines and is a third qualifying ‘crime of violence’ under the ACC Act.

5. The defendant has a 1990 Aggravated Assault F2 conviction and received a state sentence of 3-6 years. This sentence counts as three (3) points under the Sentencing Guidelines and is a fourth qualifying ‘crime of violence’ under the ACC Act.

In addition, the defendant was on active probation at the time of the instant offense.

D. Ties To The Community

1. While the defendant arguably has some ties to the community, the legislative history of the Comprehensive Crime Control Act of 1983 indicates that Congress found that community or family ties do not and should not weigh heavily in the risk of flight analysis. See Sen. Comm. on Judiciary, Comprehensive Crime Control Act

of 1983, S. Rep. No. 98-225, 98th Cong., 1st Sess. 24, 25 (1983).

E. History and Character of the Defendant

The defendant is unemployed; he does not provide financial support to anyone. He admits to a history of prior drug use and indicates that he used marijuana on occasion from 1989 to 1990. He has five known failures to appear. On February 17, 1999 he represented to Special Agent Seref McDowell of Alcohol, Tobacco and Firearms, that he would surrender by 10:00 am but failed to do so; he was arrested by Philadelphia Police later in the day. His lack of employment, his substantial history of violent and drug distribution activity, his history of drug abuse and the substantial sentence the defendant faces if convicted are factors that weigh against his release pending disposition of this matter.

III. CONCLUSION

Nothing short of 24-hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute at Section 3142(f) would serve only to inform the Court, after the fact, that the defendant has fled or resumed his criminal career.

Therefore, it is ORDERED that:

(1) the defendant be committed to the custody of the United States Marshall for confinement;

(2) the defendant be afforded reasonable opportunity for private consultation with counsel; and

(3) on order of a Court of the United States, or on request of an attorney the government, the person in charge of the corrections facility in which the defendant is confined deliver the defendant to a United States Marshal for the purpose of an appearance in connection with a court proceeding.

BY THE COURT:

Date:_____

**JACOB P. HART
UNITED STATES MAGISTRATE JUDGE
IN THE UNITED STATES DISTRICT COURT**

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :

v. : CRIMINAL NO. 99-76

KEVIN WONGUS

**GOVERNMENT’S MOTION AND MEMORANDUM FOR
HEARING AND DEFENDANT’S PRETRIAL DETENTION**

The United States of America, by Michael R. Stiles, United States Attorney for the Eastern District of Pennsylvania., and Louisa Ashmead Robinson, Special Assistant United States Attorney, moves for a detention hearing¹ and pretrial detention of the defendant pursuant to 18 U.S.C. § 3142(f). The government seeks this Order, because no condition or combination of conditions will reasonably assure the defendant's appearance as required or the safety of other persons and the community.²

I. THE FACTS

In support of this motion, the government makes the following representations and proposed findings of fact:

A. Probable Cause And The Evidence In This Case

1. There is probable cause to believe that the defendant has violated 18

¹ Under 18 U.S.C. § 3142(f), a judicial officer shall hold a detention hearing upon motion of the government in a case, as here, which involves an offense punishable by life imprisonment. 18 U.S.C. § 3142(f)(1)(B).

² The government must prove by a preponderance of the evidence that no conditions of release reasonably will assure the defendant's appearance or prove by clear and convincing evidence that no conditions of release will assure the safety of the community. United States v. Himler, 797 F.2d 156, 161 (3d Cir. 1986).

U.S.C. § 922(g) as charged by indictment on February 16, 1999. The evidence in this case is strong and consists of eye witness testimony of a Philadelphia police officer who recovered a loaded Bryco Arms, Model #59, 9 millimeter semiautomatic pistol, serial #755898 from the defendant.

2. The strength and nature of the case against the defendant and the corresponding probability that the defendant will be incarcerated for a significant period of time, establishes his danger to the community and increases the high risk that the defendant will not appear as required by the Court.

B. Maximum Penalties

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III. CONCLUSION

Nothing short of 24-hour custody and supervision can ensure the appearance of this defendant and the safety of the community. The conditions of release enumerated in the detention statute at Section 3142(f) would serve only to inform the Court, after the fact, that the defendant has fled or resumed his criminal career.

For all of the reasons stated above, the United States respectfully requests that its motion for pretrial detention be granted.

Respectfully submitted,

MICHAEL R. STILES
United States Attorney
Eastern District of Pennsylvania

LOUISA ASHMEAD ROBINSON
Special Assistant United States Attorney

Date: _____, 1999

CERTIFICATE OF SERVICE

I certify that on this day I caused a copy of the government's detention motion
to be served by hand addressed to:

Federal Defender's Association
Suite 800
Lafayette Building
437 Chestnut Street
Philadelphia, Pa. 19106-2414

LOUISA ASHMEAD ROBINSON
Special Assistant United States Attorney

Date: _____